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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA,)
Plaintiff,)
VS.	3:13-cr-00007-RCJ-WGC
DESMOND QUINNTRAIL HAYES,	ORDER
Defendant.	
)

Defendant was convicted under 18 U.S.C. § 924(c) for use of a firearm during and in relation to a crime of violence (Hobbs Act robbery under 18 U.S.C. § 1951). He moved for relief from this conviction pursuant to 28 U.S.C. § 2255, claiming that this conviction is improper under *Johnson v. United States*, 135 S. Ct. 2551 (2015). In *Johnson*, the Court invalided the residual clause of the Armed Career Criminal Act. At the time of his original motion, the Ninth Circuit held that the Supreme Court has not yet recognized whether *Johnson* also invalided the residual clause in § 924(c)(3)(B). This Court denied the motion, and Defendant appealed. During the course of the appeal, the Supreme Court held that the residual clause under § 924(c)(3)(B) was also unconstitutional in *United States v. Davis*, 139 S. Ct. 2319 (2019). Defendant therefore filed a renewal of his § 2255 motion based upon *Davis*. (ECF No. 76.) The Ninth Circuit has since

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affirmed the Court's denial of the underlying motion citing *United States v. Dominguez*, 954 F.3d 1251, 1260–61 (9th Cir. 2020), where the circuit considered whether Hobbs Act robbery was a crime of violence in light of *Davis*. (ECF No. 77.) As the Ninth Circuit rejected the argument that Defendant seeks to preserve through its renewed motion, the Court denies the renewal as moot.

CONCLUSION

IT IS HEREBY ORDERED that Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (ECF No. 76) is DENIED AS MOOT.

IT IS SO ORDERED.

Dated November 8, 2021.

ROBERT C. JONES United States District Judge